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IN THE

Supreme Court of the United States

October Term, 1963
No. 423

PAUL F. BRUNING,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE PETITIONER.

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Opinion Below.

The opinion of the Court of Appeals [R. 31-34] is reported at 317 F. 2d 229. The opinion of the District Court is reported at 192 Fed. Supp. 826.

Jurisdiction.

The judgment of the Court of Appeals was entered on May 3, 1963 [R. 34-35]. On August 2, 1963, by order of Mr. Justice White, the time within which to file a petition for a writ of certiorari was extended to September 2, 1963 [R. 35]. The petition was filed August 30, 1963, and was granted on November 18, 1963. The jurisdiction of this Court rests on 28 U. S. C. A. 1254(1).

Question Presented.

Whether Petitioner Is Liable to Pay Interest on His Federal Tax Liability Accrued Subsequent to the Date of His Being Adjudicated Bankrupt Out of His Own Assets Acquired Subsequent to the Adjudication of Bankruptcy.

Statutes Involved.

The applicable portions of the pertinent statutes will be found in the Appendix *infra*, pp. A-1 through A-3.

Statement.

Petitioner, doing business in the state of Louisiana as Bruning Construction Company, incurred withholding and federal insurance contributions taxes during the fourth quarter of the year 1951 but failed to pay said taxes when due. In March, 1952, an assessment was made against petitioner. On July 6, 1953, petitioner filed a voluntary petition in bankruptcy and was on that same day adjudicated a bankrupt in the Western District of Louisiana. The District Director of Internal Revenue at New Orleans filed a claim in the bankruptcy proceedings for said assessment. No dividend was received by the general creditors in the bankruptcy proceeding and the dividend on priority claims, including taxes, was prorated. The United States received a small distribution which was applied to said assessment. The petitioner was granted a discharge in bankruptcy in October, 1953, and the case was closed in June, 1954.

Certain adjustments were made with regard to the assessment by virtue of payments and credits. On June 22, 1959, petitioner filed a claim for refund of $955.81 which he claimed was unlawfully accrued as interest between the date of his bankruptcy on July 6, 1953 and March 7, 1958, the day of the final payment of withholding and FICA taxes assessed for the fourth quarter of 1951. The claim for refund was rejected and action timely commenced within a two year period. The amount in dispute was later reduced from $955.81 to $795.40.

The District Court sustained the Commissioner's action in denying petitioner's claim for refund and the Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court [R. 34-35].

Summary of Argument.

It has been held in *City of New York v. Saper* (1949), 336 U. S. 328 that no provision of the Bankruptcy Act permits post-bankruptcy interest on other claims in general or tax claims in particular. *Section 6873(a) of the Internal Revenue Code of 1954* and its counterparts in the Internal Revenue Code of 1939 permits collection of no more than the unpaid portion of an allowed claim for taxes from the taxpayer after the termination of the bankruptcy proceeding.

The allowance of post-bankruptcy interest upon tax claims would greatly complicate the administration of bankruptcy estates. It would also tend to defeat the

object of the Bankruptcy Act which is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." *Williams v. United States* (1915), 236 U. S. 549, 554, 555; *California State Board of Equalization v. Coast Radio Products* (1955), CA-9, 228 F. 2d 520, 522.

It is submitted that Paul F. Bruning's liability for federal taxes ceased to bear interest on the date that he was adjudicated a bankrupt and post-bankruptcy interest upon the claim allowed for said taxes in the bankruptcy proceedings may not be collected from the taxpayer's subsequently acquired property.

ARGUMENT.

The Accrual of Interest Upon Paul F. Bruning's Federal Tax Liability Ceased as of the Date He Was Adjudicated a Bankrupt and Could Not Properly Be Collected From His Subsequently Acquired Assets.

In the case of *City of New York v. Saper* (1949), 336 U. S. 328, affirming (C. A. 2), 168 F. 2d 268 the first sentence of the opinion delivered by Mr. Justice Jackson stated the issue as follows: "The ultimate issue in these three cases is whether tax claims against a bankrupt bear interest until the date of bankruptcy as held by the court below, or until payment as previously held by another Court of Appeals." In the petitioner's view of the present proceeding the ultimate issue is the same here as in the *Saper* case, *supra*. The Supreme Court upheld the decision of the Court of Appeals for the Second Circuit that interest on tax claims accrued only to the date of bankruptcy. In so doing the Supreme Court reasoned in the course of its opinion as follows:

> "If the question were one of first impression to be decided in the light of the present statute alone, we should have no difficulty in affirming the court below. More than forty years ago, Mr. Justice Holmes wrote for this Court that the rule stopping interest at bankruptcy had then been followed for more than a century and a half. He said the rule was not a matter of legislative command or statutory construction but, rather, a fundamental principle of the English bankruptcy system which we copied. *Sexton v. Dreyfus*, 219 U.S. 339, 344, 31 S. Ct. 256, 257, 55 L. Ed. 244. Our present statute contains no provision expressly repudiat-

ing that principle or allowing an exception in favor of tax claims. Every logical implication from relevant provisions is to the contrary. Section 63, sub.a(1), allows interest on judgments and written instruments only to date of bankrupty. Section 63, sub. a(5), 11 USC Section 103, sub. a(5), 11 USCA, Section 103, sub. a(5), allows interest only to that date on debts reduced to judgment after bankruptcy. No provision permits post-bankruptcy interest on other claims in general or tax claims in particular. Section 57, sub. j, 11 USC Section 93, sub. j, 11 USCA Section 93, sub. j, forbidding allowance of governmental penalties or forfeitures permits allowance of losses sustained by the acts penalized, with actual costs and 'such interest as may have accrued thereon according to law.' However, on its face this appears to delimit even such allowable debts as of the date of bankruptcy and to allow no more interest than does Section 63 with respect to the claims there specified. *Moreover, there is no interest except that which accrues according to law—it is exactly such interest that the 'fundamental principle' cuts off as of bankruptcy.* Section 57, sub. n, 11 USC Section 93, sub. n, 11 USCA Section 93, sub. n, requires governmental claims to be proved in the same manner and within the same time as other debts and only for cause shown may a reasonable extension be granted. Tax claims are treated the same as other debts except for the fourth priority of payment, Section 64, sub. a, 11 USC Section 104, sub. a, 11 USCA Section 104, sub. a, and the provision making taxes nondischargeable, Section 17, 11 USC Section 35, 11 USCA Section 35. But each of these sections is silent as to interest."

In footnote 7 of the *Saper* opinion reference is made to 2 Blackstone Commentaries 488 as the source from which the rule against post-bankruptcy interest was derived. Two exceptions to the rule were recognized in the English bankruptcy laws. If the alleged bankrupt proved solvent his creditors received post-bankruptcy interest before any surplus reverted to the debtor; and if securities held by a creditor as collateral produced interest or dividends during bankruptcy such amounts applied to post-bankruptcy interest. Neither exception provided that assets acquired by the debtor subsequent to bankruptcy were liable for the payment of post-bankruptcy interest upon any claims that had been allowed in the bankruptcy proceeding.

Volume I, Section IX, pages 222, 223 and 224 "The Bankrupt Laws" by William Cook of Lincolns Inn published 1788 in London, England, referred to by Justice Holmes in his opinion in the case of *Sexton v. Dreyfus,* 219 U. S. 339 which was in turn cited in the *Saper* case 336 U. S. 328 contains the following comments on the topic of interest:

Ex Parte Bennet 2 Atk. 528

Bromley v. Goodere 1 Atk. 79

"Commissioner, after a man becomes a bankrupt, compute interest upon his debts no lower than the date of the commission because it is a dead fund, and in such a shipwreck, if there is a salvage of a part to each person it is as much as can be expected. But there is no direction in the act for that purpose, and it has been used only as the best method of settling the proportion among the creditors, that they may have

Ex Parte Rooke 1 Atk. 244

a rate-like satisfaction; nor does the certificate operate as a discharge of the fund before vested in the assignees, thereby to deprive the creditors of subsequent interest, but extends only to any remedy to be taken against the person of the bankrupt or his future effects."

"If a mortgage is not adequate to the payment of principal and interest, the mortgagee must apply by petition to have the security sold, and to be admitted a creditor for the deficiency, but the interest of the mortgage is only to be calculated to the date of the commission."

Ex Parte Wardell 29th March 1787

"Therefore upon a petition stating, that previous to the month of December, 1778, John Dyer was indebted to Wardell, in the principal sums of 500£ and 200£ and to secure the repayment thereof, with lawful interest for the same, he mortgaged to him certain copyhold estates. That on the 25th day of April, 1776, Dyer became a bankrupt, and at the time of issuing the Commission was indebted to Wardell, in said two sums 500£ and 200£ with an arrear of interest due thereon. That the mortgage was an insufficient security for the principal and interest, and therefor the petition prayed that the commissioners might proceed to a sale of the mortgaged premises, and that the money arising by the sale, might be applied to the payment of the mortgage money and interest due and to grow due on the mortgage together with costs, and that petitioner might be at lib-

erty to prove the remainder of his debt under the commission, and receive a dividend with the other creditors. The assignees were served but did not appear. It was contended for the mortgagee, that he was entitled to interest to the time of sale, but the Lord Chancellor referred it to the Commissioner, to take an account of the principal and interest due to the petitioner and to tax his costs, and directed that the Commissioner in taking such account, should distinguish between interest incurred after the bankruptcy; and then the estate should be sold, and the monies to arise from the sale should be applied in payment of what should be found to be due the petitioner for principal, interest and costs, and in case the same should be insufficient for the payment of the principal and of the interest to the time of bankruptcy and also of the costs, petitioner should be admitted a creditor under the commission, for the deficiency of what should be found due to him for principal and interest to the time of bankruptcy only, and for his costs, and be paid a dividend, etc."

7 Vin. Abr. 110

"But if the estate mortgaged is sufficient to answer the principal and interest, the assignees cannot redeem without paying interest to the time of redemption."

Section 6873(a) Internal Revenue Code of 1954 (26 U. S. C. A. 6873(a)) contains provisions that are entirely harmonious with the holding of the Supreme Court in the *Saper* case, 336 U. S. 328. Congress stated in that section

"Any portion of a claim for taxes allowed in a receivership proceeding or in any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding."

The House Ways and Means Committee Report on Section 6873 of the Internal Revenue Code of 1954, House Report 1337, Page A 422 and the Senate Finance Committee, Report No. 1622, Page 598, both state in their material part:

"This section, which corresponds to sections 274 and 1015 of existing law, relating to the income and gift taxes, requires any unpaid portion of a claim for any tax allowed in the receivership or Bankruptcy Act proceeding to be paid upon notice and demand. * * *"

The cases of *California Board of Equalization v. Coast Radio Products* (1955), CA-9, 228 F. 2d 520 and *Newberg v. United States* (1961), CA-2, 296 F. 2d 153, affirming 187 F. Supp. 158 do not derogate from the statutory rule that only the unpaid portion of a claim allowed in a bankruptcy proceeding shall be paid by the taxpayer. Both cases arose in situations where no claim was presented in the bankruptcy proceeding for the tax liability whose recovery was sought from the after-acquired assets of the taxpayers. The Ninth Circuit pointed out in the case of *California State Board of Equalization v. Coast Radio Products, supra*, that a taxing agency could pursue alternative courses. The Court said:

"It could either file its claim in the bankrupt estate to secure payment from the proceeds thereof,

> or it could rely upon the non-dischargeable nature of the debt, ignore the proceeding and bring an action to collect from appellee's after-acquired property." 228 F. 2d 522, 525.

In the present case the Government chose the first alternative. It complied with the provisions of *Sections 63(a) (1) (5)* and 57(j) and (n) of the Bankruptcy Act. (11 U. S. C. A. 63(a) (1) (5) and 57(j) and (n)). It filed a claim for its taxes in Paul F. Bruning's bankruptcy proceeding on January 11, 1954 [R. 26] and received a dividend of $701.32 on July 10, 1956 [R. 26]. Petitioner has paid the balance of the tax and interest thereon to the date of bankruptcy without question.

However, post-bankruptcy interest on the allowed claim was collected in the amount of $795.40 from the petitioner on March 7, 1958, by the credit of an overpayment of his income taxes and interest for the calendar years 1953 and 1954 [R. 26-27]. The sum of $795.40 in post-bankruptcy interest was not an unpaid portion of a claim allowed in bankruptcy. Interest on that claim could only be allowed to the date of adjudication. *City of New York v. Saper* (1949), 69 S. Ct. 554, 336 U. S. 328, affirming CA-2, 168 F. 2d 268 which had affirmed 75 Fed. Supp. 458; *Bass, Trustee in Bankruptcy v. U. S.* (1959), CA-9, 271 F. 2d 129; *In Re Kerber Packing Co.* (1960), CA-7, 276 F. 2d 245; *National Foundry of New York v. Director of Internal Revenue* (1956), CA-2, 229 F. 2d 149; *Sword Line v. Industrial Commissioner of New York* (1954), CA-2, 212 F. 2d 865; *United States v. Harrington* (1959), CA-4, 269 F. 2d 719; *United States v. Mighell* (1959),

CA-10, 273 F. 2d 682; *United States v. Goggin* (1951), CA-9, 187 F. 2d 530.

It is submitted that the Government cannot pursue both alternatives here at the same time. Having first submitted a claim in the bankrupt estate it must be satisfied with collection of the unpaid balance of the allowed claim, exclusive of post-bankruptcy interest, from Bruning after the termination of the bankruptcy proceeding.

Section 6873(a) of the Internal Revenue Code of 1954 was in effect when post-bankruptcy interest was collected from Bruning on a tax claim that had been allowed in the bankruptcy proceeding. The terms of that section of the Internal Revenue Code are clear and the reports of the Committees of Congress likewise indicate a clear congressional intent that only the part of the tax claim allowed in the bankruptcy proceeding, exclusive of post-bankruptcy interest, could be collected from the taxpayer after the termination of that proceeding. This was the conclusion reached by the Court of Appeals for the Tenth Circuit in the case of *United States v. Mighell* (1959), CA-10, 273 F. 2d 682.

In the *Mighell* case, *supra*, the Court had before it the issue of an injunction issued by the District Court against the Director of Internal Revenue to prevent him from collecting post-bankruptcy interest and penalties from a bankrupt subsequent to his discharge. It upheld the taxpayer as against post-bankruptcy interest on the authority of the cases of *City of New York v. Saper*, 336 U. S. 328; *United States v. Harrington* (CA-4), 269 F. 2d 719 and *United States v. Bass* (CA-9), 271 F. 2d 129. The Tenth Circuit discussed the reasoning underlying its decision in the case of *United*

States v. Mighell, 273 F. 2d 682, 684 in the following terms:

> "The United States contends that the district court abused its discretion in enjoining the Director from asserting against the bankrupts any claims for interest and penalties other than those expressly allowed. The argument is that the bankruptcy court determines the right to discharge but, except in unusual circumstances nonexistent here, does not determine the effect of discharge.
>
> In *Local Loan Co. v. Hunt*, 292 U. S. 234, the Supreme Court held that a bankruptcy court has the power to protect its orders by ancillary proceedings and, in unusual circumstances, may enjoin a threatening creditor from proceeding against assets earned by the bankrupt after discharge where the debt was provable and dischargeable in the bankruptcy proceedings. This circuit followed the *Hunt* decision in *Personal Industrial Loan Corporation v. Forgay*, 10 Cir., 240 F. 2d 18, 19, saying that the power to enjoin "is not an absolute power and may be exercised only under such conditions as appeal to the equitable conscience of the court."
>
> "Abuse of discretion is claimed on the ground that the bankruptcy court has anticipated an action for collection and an erroneous interpretation of the discharge order. The difficulty is that the claim of the United States is based upon a statutory lien which requires no judgment to make it effective. The need for injunctive relief is more apparent here than it was in the *Forgay* case where state court action was necessary to collect the debt and the discharge could have been pleaded in bar.

"The remedy in bankruptcy proceedings of an injunction against the District Director of Internal Revenue was expressly ordered in *National Foundry Co. of N. Y. v. Director of Internal Revenue,* CA-2 229 F. 2d 149 (48 AFTR 853), in circumstances which differ from those under consideration here only in the fact that there a corporation was involved and here we are concerned with individuals. In the *National Foundry* case it was said that proceedings to collect were "at best futile, at worst inimical to the future welfare of the newly reorganized corporation." That statement applies here. There is no significant distinction between a reorganized corporation struggling to regain financial health and an individual seeking relief from overburdensome debts. The issuance of the injunctive order in the circumstances of this case was not an abuse of discretion."

The case of *Bass, Trustee in Bankruptcy v. U. S.* (1959), CA-9, 271 F. 2d 129, was known as *In re Cameron No. 69054-Y* in the District Court for the Southern District of California. 2 AFTR 2d 5826. The District Court's Opinion was written by Chief Judge Yankwich. In the course of that opinion Judge Yankwich said:

"Interest on Claims in Bankruptcy

The determination of the matter calls for a brief examination of the problem of interest on claims in bankruptcy. Section 63(a) of the Bankruptcy Act of 1938, which, in one form or another, has existed since the enactment of the first Bankruptcy Act, provides:

'Debts of the bankrupt may be proved upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest;'

"One of the great innovations of the 1938 Act was to put claims of the United States and the States in the same class with others so far as proving and filing are concerned, with the exception that the Government or a State or subdivision may obtain an extension of time. The object of the section, as interpreted by writers, so far as interest is concerned, has been summed up in this manner:

'A governmental or public claim can include interest in like manner and to the same extent as any other claim, but to no greater extent. It cannot include interest accruing after the filing of the bankruptcy or reorganization petition, even though it has been reduced to lien form."[2]

"The Congress, in placing federal and state taxing bodies and other creditors on the same footing as to interest, gave effect to traditional doctrine which, for over a century and a half, in England

[2] 2 Remington Bankruptcy, 1956, pp. 224-225.

and in the United States, disallowed interest in bankruptcy. The reason was stated by Mr. Justice Holmes in a leading case:

> 'For more than a century and a half the theory of the English bankrupt system has been that everything stops at a certain date. Interest was not computed beyond the date of the commission. * * * The rule is not unreasonable when closely considered. It simply fixes the moment when the affairs of the bankrupt are supposed to be wound up."[10]

There has been no break in the continuity of this approach.[11] Significantly, in the last case, the Court says as to Government tax claims:

> 'Tax claims are treated the same as other debts except for the fourth priority of payment, Section 54(a), 11 U.S.C. Section 104(a), and the provision making taxes nondischargeable, Section 17, 11 U.S.C. Section 35. But each of these sections is silent as to interest.'
>
> 'The long-standing rule against post-bankruptcy interest thus appears implicit in our current Bankruptcy Act.'

"In the case in which this statement was made, the Court held that the City of New York could not claim interest on taxes beyond the date of bankruptcy. As the Bankruptcy Act of 1938 makes no distinction between state and federal taxes

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[10]Sexton v. Dreyfus, 1911, 219 U. S. 339, 344.

[11]*American Iron Company v. Seaboard Airliner*, 1913, 233 U. S. 261, 366-367; *Vanston Committee v. Green*, 1946, 329 U. S. 156, 163-165. *In re Inland Gas Corp.*, 6 Cir., 1957, 241 F. 2d 374.

grouping them as claims, the Courts of Appeals which have had occasion to apply this decision, have held that tax claims by the Government of the United States are in the same category and draw no interest beyond the date of bankruptcy.

"The Supreme Court, in denying certiorari in two of these cases, specifically referred to its ruling in the *Saper* case. It is noteworthy also that in each of these cases, the Government urged (*as it does in this case*), that the Saper case ruling be confined to the specific situation in that case. However, the Courts declined to do so and held that, by analogy, the principle applied not only to bankruptcy, but to receiverships and reorganization proceedings. The Court of Appeals for the Second Circuit in the case just cited, speaking through Chief Judge Clark, said very emphatically:

'The question of the accruing of interest and tax penalites during bankruptcy had divided the courts, including different panels of our own court, until the case of City of New York v. Saper, 336 U.S. 328 (38 AFTR 491), 69 S. Ct. 554, 93 L.Ed. 710, and other companion cases settled that such claims, whether federal or state, were not collectible in bankruptcy including reorganization and arrangement proceedings. Thereafter we construed the meaning and intent of this principle to be that such claims could not thereafter be used to harass a reorganized corporation as it attempted anew to face the vicissitudes of business life. It is true that Sword Line v. Industrial Commissioner of State of New York, 2 Cir., 212 F. 2d 865, certiorari de-

> nied 348 U.S. 830, 75 S. Ct. 53, 99 L.Ed. 654, specifically concerned a state claim; but the entire reasoning, based upon the Saper principle, was as completely applicable to federal as to state claims. See 30 N.Y.U.L.Rev. 716, n. 2, 718, n. 17. In our view interest and penalties did not accrue after the bankruptcy. Whether this or a rationale that they accrued but were barred, see 54 Col. L. Rev. 1293; 30 N.Y.U.L. Rev. 558, 580-584, is the more appropriate, the result is the same. They are nonexistent; and the proceedings for their collection are at best futile, at worst inimical to the future welfare of the newly reorganized corporation. In the Sword Line case there was an extensive and persuasive dissent advancing all the arguments which it seems the appellee here can eventually propound; but the denial of certiorari, 348 U.S. 830, 75 S. Ct. 53, 99 L.Ed. 654, terminated that claim and permitted our injunction against the state proceedings for collection to stand.'"

It appears probable that the future welfare of the bankrupt was historically, as now, an important element for consideration when the English Bankruptcy laws were taking form. It is well known that at that time imprisonment for debt was common. If post-bankruptcy interest were allowed many an imprisoned debtor would never get out of jail much less regain what Judge Chamber's, in the opinion here on review, calls the "debtor's economic health." 317 F. 2d 229, 231.

It is Bruning's contention that *Section 17(a) of the Bankruptcy Act* and *Section 6873(a) of the Internal Revenue Code of 1954* confine the impairment of a

bankrupt's economic health by a claim for Federal taxes to the unpaid balance of the allowed portion of that claim, without allowance for any interest upon the liability itself subsequent to bankruptcy. The Government is limited to taking the entire bankrupt estate, if necessary, plus an amount of the bankrupt's after-acquired property to pay the unsatisfied portion of the allowed tax claim.

Conclusion.

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

Dated: January 7, 1964.

ERNEST R. MORTENSON,
Counsel for Petitioner.

APPENDIX

Statutes Involved.

Section 17(a)(1) Bankruptcy Act (11 USCA 35 (a)(1)):

17(a)(1). "Debts not affected by a discharge

(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or re-

tained by his employer to secure the faithful performance by such employee of the terms of a contract of employment. July 1, 1898, c. 541, § 17, 30 Stat. 550; Feb. 5, 1903, c. 487, § 5, 32 Stat. 798; Mar. 2, 1917, c. 153, 39 Stat. 999; Jan. 7, 1922, c. 22, 42 Stat. 354; June 22, 1938, c. 575, § 1, 52 Stat. 851.

Section 57(j)(n) Bankruptcy Act (11 USCA 93 (j) and (n)):

(j) "Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."

(n) "Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed; . . . ."

Section 63(a)(1)(5) Bankruptcy Act (11 USCA 103):

"Debts which may be proved

(a) Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at

the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; . . . . (5) provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments;"

Sections 6873(a) Internal Revenue Code of 1954 (26 USCA 6873(a)):

"UNPAID CLAIMS.

(a) General Rule.—Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding."